

## Message Text

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ACTION ARA-10

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FM AMEMBASSY BRIDGETOWN

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C O N F I D E N T I A L BRIDGETOWN 2175

PASS TO WILLIAM HENDRICKS, NTSB, CENTRAL INVESTIGATION  
DIVISION, AVIATION ACCIDENT BRANCH (AI-11)

E.O. 11652: GDS

TAGS: EAIR, BB, CU

SUBJ: JUDICIAL INQUIRY, CUBANA CRASH

REF: BRIDGETOWN 2167

SUMMARY

JUDICIAL INQUIRY OPENED WITH LENGTHY CUBAN LEGAL/POLITICAL INTERVENTIONS REQUESTING THAT USG NOT BE PERMITTED TO PARTICIPATE. US RESPONSE (DELIVERED BY WILLIS, L/ARA) TOUCHED ON LEGAL POINTS, SET OUT BASIS FOR US PARTICIPATION, AND REJECTED CUBAN ASSERTIONS OF USG COMPLICITY IN ACT. AFTER BRIEF ADJOURNMENT, COMMISSIONER RULED THAT USG WOULD PARTICIPATE, DRAWING IN SUBSTANTIAL PART ON US INTERVENTION. CUBA STATED IT WOULD CONTINUE TO PARTICIPATE UNDER PROTEST. INQUIRY THEN WENT TECHNICAL AND RAPIDLY COOLED IN TONE, PROCEEDING THROUGH TESTIMONY OF 4 WITNESSES (GROUND HANDLERS AND ATC'S). INQUIRY CONTINUES TUESDAY MORNING. NO ACTION REQUIRED. END SUMMARY

1. JUDICIAL INQUIRY OPENED ALONG LINES OF MONDAY MORNING  
LOCAL PRESS PREDICTIONS THAT CUBA WOULD OBJECT TO US  
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REPRESENTATION ON BASIS OF AMERICAN INVOLVEMENT AS

"INTELLECTUAL AUTHORS" OF SABOTAGE OF CUBANA 455. AFTER COMMISSIONER ANNOUNCED WILLIS AND DREIFUS AS U.S. ACCREDITED REPS, BARBADIAN LAWYER REPRESENTING CUBAN DELEGATION, FOLLOWED BY MEMBER OF CUBAN DELEGATION, LAUNCHED INTO LENGTHY (45 MINUTE) OPENING STATEMENTS. CUBAN POSITION MESHED LEGAL AND POLITICAL ARGUMENTS IN MAKING CASE THAT US PRESENCE WAS IMPROPER. BASIC POINTS WERE THAT (1) CRASH CLEARLY INVOLVED SABOTAGE, A DELIBERATE ACT, AND THEREFORE WAS NOT AN "ACCIDENT". THUS ANNEX 13 OF CHICAGO CONVENTION -- APPLICABLE TO AIRCRAFT ACCIDENTS AND ESTABLISHING ROLE IN INVESTIGATIONS OF STATE OF MANUFACTURER -- WAS NOT APPLICABLE (ARGUMENT SET OUT SOME RATHER SUBTLE POINTS CONCERNING THE DEFINITION OF ACCIDENT SET OUT IN ANNEX 13). (2) CHAPTER 5.23 OF ANNEX 13 CALLED FOR PARTICIPATION BY STATE OF MANUFACTURER WHEN THIS WOULD "SERVE A USEFUL PURPOSE"; AS THE CASE INVOLVED SABOTAGE, NO ISSUE OF AIRWORTHINESS WAS PRESENTED, AND THEREFORE THERE IS NOTHING IN THE PECULIAR KNOWLEDGE OF THE STATE OF MANUFACTURER THAT WOULD MAKE ITS ROLE USEFUL -- THE INCIDENT WOULD HAVE OCCURRED REGARDLESS OF DESIGN CHARACTERISTICS. (3) US PRESENCE COMPLICATES AND INCREASES THE COST OF FURTHER CUBAN PARTICIPATION IN INQUIRY, SINCE USG WOULD BE INVOLVED IN AN INVESTIGATION OF AN ACT WHICH USG HELPED TO CAUSE (SORT OF A FOX-IN-CHICKEN-COOP ARGUMENT). (4) USG HARBORS ENEMIES OF THE CUBAN PEOPLE AND IS RESPONSIBLE FOR THIS AND NUMEROUS OTHER TERRORIST ACTS AGAINST CUBAN STATE. CUBAN DELEGATE (MARTINEZ) CONCLUDED REMARKS STATING "CATEGORICAL OPPOSITION TO PRESENCE OF PERSONS FROM WHENCE ORIGINATE THE INTELLECTUAL AUTHORS OF THE ACT," AND MOVING THAT US REPS BE EXCLUDED.

2. COMMISSIONER REQUESTED WILLIS TO DIRECT HIMSELF TO CUBAN MOTION, ANSWER COVERING FOLLOWING POINTS:

(1) BASIC REASON FOR USG PARTICIPATION WAS IN RESPONSE TO BARBADOS GOVERNMENT INVITATION. (2) WE INTEND TO BE OF ASSISTANCE TO THE INQUIRY IN ITS DETERMINATION OF THE FACTS AND GENERALLY WITH RESPECT TO RECOMMENDING MEASURES THAT CAN BE TAKEN TO PREVENT, AS APPEARS LIKELY  
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IN THIS CASE, TERRORIST ATTACKS AGAINST AIRCRAFT IN THE FUTURE. (3) CUBAN ANALYSIS OF ANNEX 13 DEALT ON LEGALISMS AND NEED NOT BE REBUTTED POINT-BY-POINT. STATED IN SHORT, THE FLATLY INCORRECT ARGUMENT THAT SABOTAGE IS NOT AN ACCIDENT UNDER ANNEX 13 CONTRAVENED 25 YEARS OF ICAO PRACTICE. (4) ANY ASSERTION THAT THE USG WAS INVOLVED IN THE CUBANA CRASH, WHETHER DIRECTLY OR INDIRECTLY, UNDER WHATEVER THEORY INCLUDING

THE NOVEL ONE OF "INTELLECTUAL AUTHORSHIP," IS ALTOGETHER WITHOUT FOUNDATION IN FACT, AND SHOULD BE REJECTED BY THE INQUIRY FROM ANY PLACE IN ITS PROCEEDINGS. (5) THE USG HAS BEEN AT THE FOREFRONT IN SEEKING COORDINATED INTERNATIONAL EFFORTS TO COMBAT TERRORISM IN ALL ITS FORMS; ITS POSITION ON SUCH ACTS CAN BE QUESTIONED BY NO ONE. (6) TO DISSIPATE THE THREAT OF TERRORISM REQUIRES COOPERATION AMONG STATES, TO THE CASTING OF UNSUBSTANTIATED CHARGES AT ONE ANOTHER. (7) TO ACCEPT THE CUBAN POSITION INVOLVES A PREJUDGMENT OF THE ISSUES AT THE BEGINNING OF THE INQUIRY, AND THEN FINDING FACTS WHICH CONFORM TO THE AGREED-UPON NOTIONS; THE PURPOSE OF THE INQUIRY SHOULD BE FIRST TO FIND THE FACTS, AND THEN DRAW CONCLUSIONS FROM THEM.

3. CUBAN DELEGATION'S LAWYER THEN MADE RESPONSE TO WILLIS' STATEMENT TO WHICH WILLIS DECLINED ANSWER. COMMISSIONER CALLED HALF HOUR ADJOURNMENT TO CONSIDER CUBAN MOTION, RETURNING WITH RULING THAT US WOULD PARTICIPATE. COMMISSIONER'S DECISION REJECTED CUBAN OPOSITION ON DEFINITION OF ACCIDENT UNDER ANNEX 13, NOTING THAT BARBADOS GOVERNMENT DECISION TO INVITE USG WAS BASED ON CHAPTER 5.23 OF ANNEX 13. HE WENT ON TO STATE THAT THE CUBAN MOTION WOULD LIMIT THE SCOPE OF THE COMMISSION OF INQUIRY AS IT HAS BEEN ESTABLISHED BY THE GOVERNMENT, AND WOULD LIMIT THE GOVERNMENT'S DECISION THAT THE USG BE INVITED TO PARTICIPATE. MOREOVER, THIS IS A JUDICIAL INQUIRY AND THEREFORE IT WAS CONTRARY TO PROCEDURES AND PURPOSES TO REACH CONCLUSIONS BEFORE RECEIVING EVIDENCE. CUBAN DELEGATE RESPONDED ACCEPTING THE DECISION BUT STRESSING THAT ITS PARTICIPATION WAS UNDER PROTEST IT HAD MADE CONCERNING USG ROLE.

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4. CONCLUDING PRELIMINARY QUESTIONS, INQUIRY THEN RAPIDLY MOVED THROUGH FIRST FOUR TECHNICAL WITNESSES, BAGGAGE SUPERVISOR, SUPERVISOR OF AIRCRAFT FUELING, ATC-TOWER SUPERVISOR, ATC-TERMINAL CONTROL OFFICER. WITNESSES ARE EXAMINED IN FOLLOWING ORDER: BARBADOS, CUBA, US, BWIA, COMMISSIONER.

5. WE ARE ATTEMPTING TO RETAIN LIST OF ACCREDITED REPS. THERE APPEAR TO BE TEN CUBANS, NO PARTICIPATION FROM GUYANA, TRINIDAD AND TOBAGO, OR NORTH KOREA, AND VENEZUELA MAY PARTICIPATE BUT SITUATION IS CONFUSING. WE DID NOT SEE CANADA OR UK REPS TODAY. IN QUESTIONING OF TECHNICAL WITNESS, BWIA AND CUBA APPEAR TO BE IN A DEVELOPING SPARRING MATCH RE ATTRIBUTION OF FAULT FOR APPARENTLY LAX SECURITY MEASURES (WE'RE STAYING OUT OF THAT ONE).

6. INQUIRY IS IN JUDICIAL SETTING, LOTS OF LAWYERS,  
WITH ACTING CHIEF JUSTICE DENYS WILLIAMS THE COMMISSIONER,  
HOWEVER, AFTER INITIAL LEGAL BATTLES ON PROCEDURAL  
QUESTIONS, INQUIRY DEVELOPED INTO MORE TRADITIONAL  
FRAMEWORK OF ACCIDENT INVESTIGATION. WE ARE TOLD  
COMPLETE TRANSCRIPTS OF DAY'S EVENTS WILL BE AVAILABLE  
EVERY 24 HOURS WITH LUCK. INQUIRY MAY PROCEED SLOWLY,  
AS CONSECUTIVE TRANSLATIONS DRAW OUT EACH STATEMENT.  
BRITTON

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## Message Attributes

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